JD(NY)-20-17
Newark, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
NEW YORK BRANCH OFFICE
DIVISION OF JUDGES

THE LEAGUERS, INC.

And Case 22–CA–189289

COMMUNICATIONS WORKERS
OF AMERICA

Joanna Pagones, Esq., of Newark, New Jersey,
for the General Counsel.
Melvin C. Randall, Esq., of Newark, New Jersey,
for the Respondent.
Ira W. Mintz, Esq., of Somerset, New Jersey,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

KENNETH W. CHU, Administrative Law Judge. This case was tried in Newark, New Jersey, on October 24, 2017, pursuant to a complaint issued by Region 22 of the National Labor Relations Board (NLRB) on March 31, 2017.[1]

The complaint states that at all times since June 20, 2016, the Communications Workers of America, AFL–CIO (Union or CWA) has been the exclusive collective-bargaining representative of the following employees of The Leaguers, Inc. (Respondent), constituting a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time Teachers, Lead Teachers, EHS Teachers, and Family advocates, Receptionists, Associate Teachers, EHS Teaching Assistants, Assistants/Aides, Child Care Providers, Home Visitor Specialists, Health/Nutrition Specialists, EHS/CCP Clerks, Floaters, Cooks, Food Service Workers, Maintenance Workers, Custodians, and Substitute including Teachers and Cooks, employed by the Employer at its various New Jersey locations, including its Newark, New Jersey facilities, its Irvington, New Jersey facilities, its Elizabeth, New Jersey facility, and its Roselle, New Jersey facility, but excluding all Office Clerical employees, Administrative Assistants, Managerial Employees, Directors, Guards and Supervisors as defined in the Act, and all other employees.

The complaint alleges that about October 2016, the Respondent changed the health benefits provided to the unit employees without prior notice to the Union and without affording

[1] All dates are in 2016 unless otherwise noted.

the Union an opportunity to bargain with the Respondent over the change in violation of Section 8(a)(5) and (1) of the National Labor Relations Act (Act). The complaint alleges that the change in the health plan relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining (GC Exh. 1e).[2]

The Respondent timely filed an answer denying the material allegations in the complaint (GC Exh. 1).[3]

On the entire record, including my assessment of the witnesses' credibility[4] and my observations of their demeanor at the hearing and corroborating the same with the adduced evidence of record, and after considering the brief filed by the General Counsel, the Union, and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION AND UNION STATUS

The Respondent, a non-profit New Jersey corporation, is engaged in human services and community development in various locations in the State of New Jersey, including Newark, Irvington, Elizabeth, and Roselle, the facilities involved in this complaint. The Respondent derived gross revenues valued in excess of $250,000 and purchased and received at the named facilities goods valued in excess of $50,000 directly from points outside the State of New Jersey. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act (GC Exh. 2).

II. ALLEGED UNFAIR LABOR PRACTICES

a. The Change in the Health Care Insurance Plan

On about June 20, Region 22 certified the Union as the exclusive collective-bargaining representative of the above unit employees. By letter dated June 27, the Union requested certain relevant information for the purpose of collective-bargaining and reminded the Respondent that the Union is the exclusive representative of the unit employees and ". . . any discussions over terms and conditions of employment must occur directly with our union" (R. Exh. 2). Veronica Ray, who was and is the CEO and executive director of the Respondent, acknowledged that she received the letter from the Union and understood that the Respondent is to maintain the status quo (Tr. 100).

It is not disputed that the Respondent has provided the unit employees with a health insurance plan through Horizon Blue Cross Blue Shield (Horizon) at the time of the union certification through October 31 (GC Exh. 7).

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[2] The parties signed an informal settlement agreement prior to opening the record resolving the allegations in Case No. 22–CA–190370 (GC Exh. 1n).

[3] The exhibits for the General Counsel are identified as "GC Exh." and the Respondent's exhibits are identified as "R. Exh." The posthearing brief of the General Counsel is identified as "GC Br.;" the Union's brief is identified as "U. Br.;" and the Respondent as "R. Br." The hearing transcript is referenced as "Tr."

[4] Witnesses testifying at the hearing included Fareeda Mabry, Hetty Rosenstein, Anne Luck-Deak, Veronica Ray and Janet Ramos.

The counsel for the General Counsel argues that the Respondent unilaterally changed the bargaining unit health insurance and medical benefits plan, effective November 1, without first notifying the Union and offer to bargain over the changes. It is maintained that the Union became aware of the change only after being informed by the unit employees.

Fareeda Mabry (Mabry) testified that she was and is a lead organizer for the Union. She testified that the Respondent had a health plan with Horizon at the time the Union was certified by the Region as the exclusive collective-bargaining representative for the unit employees at the four New Jersey facilities. Mabry stated that she received an email on October 27 from a teacher in the Elizabeth facility who had received notification from the Respondent's human resources office of a change in the health care provider from Horizon to Cigna. The email was distributed to all employees in the four facilities on October 26 by Janet Ramos, the director of human resources for the Respondent. At the time of the change in health providers, the Union had already requested bargaining with the Respondent. Mabry stated that she forwarded her email to Hetty Rosenstein, the union area director, Anne Luck-Deak, the union organizing director and to the Union's attorney, Ira W. Mintz (Tr. 22–28; GC Exh. 7).

The Cigna health plan became effective on November 1 (GC Exh. 8). Mabry again forwarded the email referencing the effective date of the new health plan to Rosenstein, Luck-Deak and Mintz. Mabry testified that she was instructed to talk to the unit employees about the previous health plan under Horizon and gather information about the two plans and report back to her superiors. Mabry received a copy of the Horizon plan for 2014 and 2015 from one of the unit employees. The Horizon plan set forth the cost of the plan for various categories of coverage for the 2 prior years (Tr. 31–36; GC Exhs. 9, 10 and 11).

Hetty Rosenstein (Rosenstein) testified that she is the Union's New Jersey area director and the District 1 organizing director. Rosenstein stated that she received the information from Mabry and then sent a letter to Veronica Ray on November 14 informing her that the Respondent is obligated to maintain the status quo on the health plan and demanded to bargain over any changes (Tr. 45; GC Exh. 12). Rosenstein testified that she received a response from the Respondent's attorney, Melvin C. Randall (Randall), on November 17. In his letter, Randall stated that negotiations with the Union would be "counterproductive at this time" because there was a pending unfair labor charge with Region 22 by another union, SEIU, contesting the representation of certain unit employees by CWA. Randall requested to hold any negotiations in abeyance pending the outcome of the charge against CWA by SEIU. In addition, Randall stated that a new health care plan was necessary because of the premium increase in 2016 by Horizon of 25 percent and there would only be an 8 percent increase under Cigna. Randall asserted that this new plan resulted in a savings for all employees of 17 percent (GC Exh. 13).

Rosenstein testified that she did not respond to Randall's letter, but instead, wrote again to Ray on November 18, stating to her that the Respondent had made a unilateral change in terms and conditions of employment and is refusing to bargain with the Union (Tr. 49–51; GC Exh. 14). Rosenstein testified that she did some research in comparing the two health plans after receiving the information from Mabry. Rosenstein discovered that the plans were similar in coverage for primary care and hospitals. Rosenstein then discovered that the Cigna plan had no coverage for out-of-network medical providers and no coverage for medical specialists (Tr. 51–55; GC Exh. 8). Rosenstein provided a summary of her analysis to Mintz (GC Exh. 15).

Anne Luck-Deak (Luck-Deak) testified as the Union's district organizing director. Luck-Deak stated that she compiled the information received by Mabry (GC Exhs. 7, 9, 10, and 11) into a spread sheet to determine the premium increases based upon the information provided by the Respondent to the unit employees. Luck-Deak had four columns that set forth the dates

of the premium costs provided to the employees.[5] Luck-Deak testified that each column was captioned with the four dates and had the corresponding premium cost for each date. She testified to a situation where the premium for health coverage of a single person in 2014 was $46.57, but in 2016 (under the Cigna plan), the coverage for the same category would increase to $171.67. Luck-Deak asserted that this was an increase of 286.6 percent in the cost of coverage. Luck-Deak testified that depending on the coverage, the increase for the employees under the Cigna plan for 2016 was from 10.6 percent to 53.9 percent (Tr. 75–83, 86; GC Exh. 16).

b. The Respondent's Rationale for Changing the Health Plan

The counsel for the Respondent does not dispute that the Union was certified as the exclusive collective-bargaining representative for the unit employees by the Board. The Respondent provided four reasons for unilaterally changing the health care plan. First, the Respondent states it never refused to bargain with the Union. It asserts that the composition of the unit employees represented by the Union was under dispute based upon an unfair labor charge filed by SEIU against CWA over some of the unit employees and that Respondent was waiting for the outcome of the charge so it would bargain with the appropriate union. Second, the Respondent argues that the change in the health plan benefited the employees by reducing their premium cost under the old Horizon plan. Third, the Respondent maintains that the change in the health plan was a mere continuation of the status quo because the employees were being provided the same benefits. The Respondent states that it was simply engaging in a longstanding practice of annually reviewing and evaluating the healthcare plan and making adjustments to provide the best affordable plan for its employees. Finally, the Respondent believes there was an exigent situation to provide the insurance by November 1 to meet budget requirements and that any lapse in coverage would have resulted in penalties under the Affordable Care Act (see R. Br.).

Veronica Ray (Ray) testified that she was and is the executive director and CEO of the Respondent. Ray stated that she was aware of the union certification and never refused to bargain with the Union. Roy explained that she was approached by an official from another union, the SEIU, and was told that the SEIU represented all employees in the Respondent's Head-Start program. Ray stated that a charge was filed against the Respondent by SEIU (Tr. 99–108; R. Exh. 1). Ray stated that she never refused to bargain with the Union but wanted to wait until the Region decided on the charge filed by SEIU. Ray stated that it was the practice of the Respondent to annually review the health care plan and to provide the cost of the plan in the new budget no later than October 31. Ray stated that this was a requirement for the Respondent's Federal funding under the Department of Education Administration of Children and Families (ACF) (Tr. 97–99). Ray believed that adjusting the healthcare plan was keeping with the status quo and that she realized that an exigent situation existed to submit her proposed budget no later than October 31 (Tr. 106–108). Ray maintains that by the time she received the November 14 letter to demand bargaining over the health care changes from Rosenstein (GC Exh. 12), it was already too late to bargain because the new budget went into effect on November 1. She stated that failure to sign the contract with ACF would have resulted in all employees losing their health coverage and the Respondent subjected to penalties under the Affordable Care Act (Tr. 113–115).

[5] The four dates were October 19, 2014, October 27, 2014, October 19, 2015 and October 26, 2016.

Ray confirmed that the premium increase under Horizon for 2016 would have increased by 25 percent for Respondent's employees. Ray stated that this was untenable and instructed her insurance broker to find a better health care plan (Tr. 118–128, 135–137).

Janet Ramos (Ramos) testified that she was and is the Respondent's human resources director. She testified that Horizon was going to increase its premium of 25 percent and instructed the insurance broker to find a better plan. She testified that the Cigna plan was quoted with only an 8.6 or 8.8 percent increase over the 2014 plan (Tr. 149–153; R. Exh. 7). Ramos also insisted that the two plans were comparable with similar health coverage. Ramos testified that the Cigna plan ". . . mimic the same benefit plan as Horizon" (Tr. 157,158).

Ramos also testified that exhibit 16 of the General Counsel was in fact accurate. She stated that for a single, EPO-1, 10 months coverage, the increase in premiums from 2015 to 2016 would have been 53.9 percent (Tr. 162–165).

DISCUSSION AND ANALYSIS

The General Counsel contends that Respondent violated 8(a)(5) and (1) of the Act when it unilaterally implemented a new health insurance plan without notice and an offer to bargain over the changes with the Union (GC Br.). With regard to the unilateral change in the health insurance plan, the Respondent contends that (1) it was waiting for the outcome of the NLRB charge filed by SEIU as to which is the appropriate union to represent some of the unit employees; (2) the change in the health plan benefited the employees by reducing the premium cost; (3) the change in the health plan was a mere continuation of the status quo of a longstanding practice to annually review and evaluate the healthcare plan and to make adjustments to find the best affordable plan for its employees; and (4) there was an exigent situation to meet the budget deadline and that any lapse in health care coverage after November 1 would have resulted in penalties under the Affordable Care Act.

The Respondent violated Section 8(a)(5) and (1) of the Act When it Unilaterally Changed the Health Insurance Plan of the Unit Employees

Section 8(a)(5) of the Act requires an employer to provide its employees' representative with notice and an opportunity to bargain before instituting changes in any matter that constitutes a mandatory bargaining subject. *NLRB v. Katz*, 369 U.S. 736 (1962); *Toledo Blade Co*., 343 NLRB 385 (2004). Health insurance benefits for active employees are a mandatory subject of bargaining. *Allied Chemical and Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co., Chemical Div.*, 404 U.S. 157, 159 (1971). The duty to bargain in good faith includes a duty to abstain from unilaterally changing terms and conditions of employment without first bargaining to impasse with the designated representative regarding the changes. *NLRB v. Katz,* 369 U.S. 736, 743 (1962). However, a unilateral change in a mandatory subject of bargaining is unlawful only if it is a "material, substantial, and significant change." *Flambeau Airmold Corp*., 334 NLRB 165 (2001), quoting *Alamo Cement Co*., 281 NLRB 737, 738 (1986).

Here, the Respondent argues that there was no material, substantial, and significant change in the health plan. Indeed, the Respondent contends that the new plan would save money for its employees. Ray and Ramos testified that the Cigna plan had an increase for the following year at 8.5 percent while the previous Horizon plan would adversely increase the cost to employees to 25 percent.

I find that Rosenstein credibly testified that in comparing the two health plans, she discovered that the plans were similar in coverage for primary care and hospitals, but that the Cigna plan had no coverage for out-of-network coverage and no coverage for medical specialists. This testimony was not refuted by the Respondent and while the Respondent objected to Rosenstein's analysis in comparing the two plans, she has experience in the health care industry and has reviewed health plans in the past. While her comparison may be not 100 percent accurate, it is not disputed that the Cigna plan with no out-of-network or a narrow network coverage is a material, substantial and significant change inasmuch as it would not matter how little the employee pays in premiums if there is no out-of-network or for specialist treatment coverage.

Even accepting some inaccuracies in Rosenstein's analysis, I find that Luck-Deak also credibly testified that there would be a substantial increase in the premium cost for health coverage. Luck-Deak provided an example of a single person in 2014 paying $46.57 in healthcare premiums, but that by 2016 (under the Cigna plan), the coverage for a single person would increase to $171.67. Luck-Deak asserted that this was an increase of 286.6 percent in the cost of coverage. Luck-Deak testified that depending on the coverage, the increase for the employees under the Cigna plan was from 10.6 percent to 53.9 percent. Significantly, Ramos, testifying on behalf of the Respondent, did not dispute the accuracy of the calculations provided by Luck-Deak. As such, I find that the change in the healthcare insurance plan was a material, substantial, and significant change from the previous plan when it provided fewer out-of-network coverage options and little coverage for medical specialists. In addition, the cost of the new plan for the employees was a substantial increase in premiums from the previous Horizon plan.

The Respondent also contends that it never refused to bargain with CWA, but was waiting for the outcome of an NLRB charge filed by SEIU contesting the proper representation of some unit employees. The NLRB charge filed by SEIU was dismissed on March 20, 2017 (R. Exh. 4). The certification of representative issued by Region 22 clearly stated that CWA is the exclusive collective-bargaining representative of the aforementioned unit of employees. The certification emphasized the potential liabilities of the employer to make unilateral changes in the unit employees' terms and conditions of employment and warned it would be a violation of Section 8(a)(5) and (1) of the Act even if the changes were motivated by sound business considerations and not for undermining the labor organization (GC Exh. 5).

During the pendency of the SEIU charge, there was no prohibition for the Respondent to begin bargaining with CWA. There was no request made by the Respondent to the Region for guidance. The Region never prohibited the Respondent from bargaining with CWA or recommended that the Respondent refrain from bargaining with CWA. While I could empathize with Ray, who has little experience in collective-bargaining and was a novice in dealing with unions (Tr. 107, 108), I find that the Respondent could have nevertheless bargained with the Union with the understanding that some unit employees in the Head-Start program would not be included in the negotiations or the parties could have agreed that those employees would be handled separately once a decision from the Region is made on the SEIU charge.

The Respondent further argues that the change in the health care plan was a mere continuation of the status quo of a longstanding practice to annually review and evaluate the healthcare plan and to make necessary adjustments to provide the best affordable plan to its employees. The Respondent argues that in *Courier-Journal* at 342 NLRB 1148 (2004) and in a companion case, *Courier-Journal I*, 342 NLRB 1093 (2004), the Board held that there was no violation of Section 8(a)(5) of the Act when the employer made unilateral changes to the health care plan. The Board reasoned that

> [T]he Respondent's collective-bargaining agreement (with a different union) authorized the Respondent to change the costs and benefits of the health care plan for bargaining unit employees unilaterally, on the same basis as for nonrepresented employees. There, as here, the Respondent made numerous unilateral changes in the health care plan, both during the term of the agreement and during the hiatus periods between contracts, without opposition from the Union. In these circumstances, we find, as we did in Courier-Journal I, that the Respondent's practice has become an established term and condition of employment, and therefore that the Respondent did not violate Section 8(a)(5) when it acted consistently with that practice by making further unilateral changes.

The situation here is easily distinguishable from the *Courier-Journal* cases cited by the Respondent. In the *Courier-Journal* cases, the employer was negotiating with a union on an expired collective-bargaining agreement and the changes were made without opposition by the union. Unlike the *Courier-Journal* cases, the Respondent did not have an agreement with the Union and the Union here opposed any changes in the health care plan without first negotiating the proposed changes.

Finally, the Respondent argues there was an exigent situation to meet a budget deadline and that any lapse in health coverage after November 1 would have resulted in penalties under the Affordable Care Act.

Generally, overall impasse is required before an employer can implement changes in conditions of employment during negotiations. At the time of impasse, the employer may unilaterally implement its offer. *Litton Financial Printing Div. v. NLRB*, 501 U.S. 190, 198 (1991). However, the Board in *Bottom Line Enterprises* crafted two exceptions for (1) when a union engages in bargaining delay tactics and (2) "where economic exigencies compel prompt action." 302 NLRB 373, 374 (1991).[6] The Respondent contends the latter.

The record shows that the Respondent was informed on June 27 by the Union (R. Exh. 2) that it was the exclusive collective-bargaining representative and requested bargaining. The Respondent was also reminded in the letter not to make any unilateral changes without notifying and bargaining with the Union over the changes. On the other hand, there was a need for the Respondent to have a health care plan in the budget by October 31. The Respondent had from June to begin negotiations with the Union through October to engage in some meaningful discussions over the health care changes. If there was an exigent situation, it was caused by the Respondent. Instead of negotiating with the Union, the Respondent spent its time reviewing various health care plans, discussing the plans with the insurance broker, and engaging in the process to obtain a new plan and inform the employees of the changes. During all this time, as argued by the counsel for the General Counsel, the Respondent could have negotiated the changes in the health care plan with the Union. At the very least, the parties could have negotiated some other options by October 31.

Due to the fault of the Respondent, it now faced the untenable position of having penalties imposed under the Affordable Care Act (ACA) if a health care plan was not in place by November 1. The ACA mandates coverage for employees. Although providing health insurance coverage may have been an ACA requirement, the Respondent has nonetheless failed to meet its burden to show that the change it made was mandated by the ACA and thus

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[6] Exigent circumstances has been defined by the Board as extraordinary unforeseen events having a major economic effect which requires immediate action such to excuse the employer from its obligation to notify and bargain with the union. *RBE Electronics of S.D.*, 320 NLRB 80 (1995).

did not involve discretionary decision-making over which the Respondent was obligated to bargain. As held by the Board in *Western Cab Company*, 365 NLRB No. 78, slip op. at 2 (2017),

> It is well established that when an employer is compelled to make changes in terms and condition of employment in order to comply with the mandates of another statute, it must provide the collective-bargaining representative of its employees with notice and an opportunity to bargain over the discretionary aspects of such changes.

While the health care plan was mandated, the provisions over the medical coverage and cost were discretionary aspects of the changes and thus, subject to bargaining. In *Foodway*, 234 NLRB 72, 77 (1978), the Board stated that

> [T]he Act is the legislative scheme which, in final analysis, prescribes Respondent's bargaining obligation. While the mandate and requirements of other Federal statutes may serve to limit the area of discretion which a party may exercise in fulfilling [its] bargaining obligation . . . to enter into the bargaining process in good faith is not thereby minimized or obviated.

In *RBE Electronics*, above, the Board also found that there may be other economic exigencies that, although not sufficiently compelling to excuse bargaining altogether, should be encompassed within the exigency exception. The Board in *RBE Electronics*, above at 82, noted "other economic exigencies … that should be encompassed within the *Bottom* Line exception."

> [W]here we find an employer is confronted with an economic exigency compelling prompt action short of the type relieving the employer of its obligation to bargain entirely, we will hold under the *Bottom Line Enterprises* exigency exception … that the employer will satisfy its statutory obligation by providing the union with adequate notice and an opportunity to bargain. In that event, consistent with established Board law in situations where negotiations are not in progress, the employer can act unilaterally if either the union waives its right to bargain or the parties reach impasse on the matter proposed for change.

In defining the less compelling type of economic exigency, the Board in *RBE Electronics* made clear that the exception will be limited only to those exigencies in which time is of the essence and which demand prompt action. In those cases, the employer will "satisfy its statutory obligation by providing [the union] with adequate notice and an opportunity to bargain over the changes it proposes to respond to the exigency and by bargaining to impasse over the particular matter. In such time sensitive circumstances, however, bargaining, to be in good faith, need not be protected." Id. at 82; see generally *Naperville Ready Mix, Inc.*, 329 NLRB 174, 182–184 (1999).

However, "there is a 'heavy burden' upon an employer trying to establish application of the exception." *Cibao Meat Products v. NLRB*, 547 F.3d 336, 340 (2d Cir. 2008). The Board clarified that not all employers' proposals would meet this exception as "the exception is limited only to those exigencies in which time is of the essence and which demand prompt action." Id. at 82. The employer must "show a need that the particular action proposed be implemented promptly," that its "proposed changes were 'compelled,'" and "that the exigency was caused by external events . . . beyond the employer's control, or was not foreseeable." Id.

The Respondent has not shown that the unilateral implementation of the health care plan was due to exigent circumstances. Here, the Respondent has not satisfied its obligation under *RBE Electronics*, above, to provide notice and an opportunity to bargain over the change in the insurance plan. The Respondent admittedly had decided in early summer to change the plan. The decision to change the medical plan was based upon an assessment by Ray and Ramos that the Horizon plan was too expensive. However, as noted above, the request by the Union to bargain was made in June, which would have provided ample time for the parties to begin negotiations over the planned changes by October 31.

I find that the Respondent could have timely informed the Union and begin bargaining over the need to change before the plan was implemented at any time from June until the unilateral implementation of a different health care plan on November 1 but did not do so. I find that there were no exigent circumstances and time was not an essence for failing to inform the Union and begin bargaining over any proposed new plan.

Accordingly, I find that the Respondent violated Section 8(a)(5) and (1) of the Act when it unilaterally changed the health insurance plan of the unit employees without first providing notice to the Union and an opportunity to bargain over the changes.

CONCLUSIONS OF LAW

1. The Respondent, The Leaguers, Inc., is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union, Communications Workers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. At all material times, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees employed at its facilities in Newark, Irvington, Elizabeth, and Roselle, New Jersey, in the following appropriate unit:

> All full-time and regular part-time Teachers, Lead Teachers, EHS Teachers, and Family advocates, Receptionists, Associate Teachers, EHS Teaching Assistants, Assistants/Aides, Child Care Providers, Home Visitor Specialists, Health/Nutrition Specialists, EHS/CCP Clerks, Floaters, Cooks, Food Service Workers, Maintenance Workers, Custodians, and Substitute including Teachers and Cooks, employed by the Employer at its various New Jersey locations, including its Newark, New Jersey facilities, its Irvington, New Jersey facilities, its Elizabeth, New Jersey facility, and its Roselle, New Jersey facility, but excluding all Office Clerical employees, Administrative Assistants, Managerial Employees, Directors, Guards and Supervisors as defined in the Act, and all other employees.

4. By unilaterally implementing health insurance changes on November 1, 2016, without notice and bargaining with the Union to a lawful overall impasse in negotiations, the Respondent has violated Section 8(a)(5) and (1) of the Act.
5. The unfair labor practices, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Respondent shall be required to make whole

its employees for any losses they suffered or expenses they incurred, including increased premium costs that resulted from Respondent's unlawful changes in health care insurance. Such amounts shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Further, upon request of the Union, rescind the unilaterally implemented changes in the unit employees' health care coverage and restore the coverage, copays, and premiums available to employees prior to November 1, 2016.[7]

On these findings of facts and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, The Leaguers, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally implementing changes in its medical health care plan of its unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request of the Union, rescind the unilaterally implemented changes in the unit employees' health care coverage, copays, and premiums and restore the coverage, copays, and premiums available to employees prior to October 31, 2016.[9]

(b) Make all affected employees whole, with interest, in the manner set forth in the remedy section of this decision for any losses they suffered or expenses they incurred as a result of the unlawful action by Respondent.

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[7] The counsel for the General Counsel requests that I order a responsible management official read the notice to the assembled employees or to have a Board agent read the notice in the presence of a responsible management official (GC Br. at 18). I note that the Board has held that in determining whether additional remedies are necessary to fully dissipate the coercive effect of unfair labor practices, it has broad discretion to fashion a remedy to fit the circumstances of each case. *Casino San Pablo*, 361 NLRB 1350, 1355–1356 (2014); *Excel Case Ready*, 334 NLRB 4, 4–5 (2001). In the instant case, I find that the unfair labor practice of the Respondent does not justify the additional remedy of a notice reading. The General Counsel provided no reasons, and I cannot find any, that would justify a public reading of the notice. I find that The Leaguers is not a recidivist Respondent nor has General Counsel argued there are outstanding unfair labor practice charges against the Respondent. For these reasons, a public reading of the notice is not appropriate.

[8] If no exceptions are filed as provided by Sec. 102.46 and if no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[9] The proper remedy for unilaterally implementing changes to the employee health plan is recession of the unlawful unilateral changes and to restore the benefits that existed before the unilateral changes upon request from the Union. *UPS Supply Chain Solutions, Inc*., 364 NLRB No. 8 (2016). However, if the Union decides not to request the restoration of the status quo ante by returning to the original health care plan before the unilateral changes, the employer must nevertheless make whole the unit employees for all losses they suffered as a result of the unlawful changes in the health insurance plan. *Goya Foods of Florida*, 356 NLRB 1461 (2011).

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of reimbursement of costs incurred as a result of the change in the employees' health care insurance under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Newark, Irvington, Elizabeth, and Roselle, New Jersey facilities, where unit employees work, copies of the attached notice in English and Spanish marked "Appendix A."[10] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 1, 2016.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 13, 2017

Kenneth W. Chu
Administrative Law Judge

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefits and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to bargain collectively with the Communications Workers of American, AFL–CIO (the Union) by unilaterally implementing a new health care insurance plan without first giving notice to the Union and an opportunity to bargain over the changes of the employees in the following unit:

> All full-time and regular part-time Teachers, Lead Teachers, EHS Teachers, and Family advocates, Receptionists, Associate Teachers, EHS Teaching Assistants, Assistants/Aides, Child Care Providers, Home Visitor Specialists, Health/Nutrition Specialists, EHS/CCP Clerks, Floaters, Cooks, Food Service Workers, Maintenance Workers, Custodians, and Substitute including Teachers and Cooks, employed by the Employer at its various New Jersey locations, including its Newark, New Jersey facilities, its Irvington, New Jersey facilities, its Elizabeth, New Jersey facility, and its Roselle, New Jersey facility, but excluding all Office Clerical employees, Administrative Assistants, Managerial Employees, Directors, Guards and Supervisors as defined in the Act, and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, upon request of the Union, rescind the unilaterally implemented changes in unit employees' health care coverage, copays, and premiums and restore the coverage, copays, and premiums available to employees prior to November 1, 2016.

WE WILL make you whole for any losses that you suffered or expenses you incurred as a result of the unlawful action taken against you, with interest.

The Leaguers, Inc.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

National Labor Relations Board Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102
Hours of Operation: 8:30 a.m. to 5 p.m.
973–645–2100

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/22-CA-189289 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 973–645–3784.